MT LEGISLATIVE HISTORY

Chapter 640 1983

Bill H 281 S _____ Original bill & hist. ✓ C

H. Committee on Lab & Emp Rel. S. Committee on Lab & Emp Rel.

Hearing Date(s)	Jan 25	✓ C	Hearing Date(s)	Mar 17	✓ C
	Feb 17	✓ C		Mar 19	✓ C
	_____	___ C		Mar 24	✓ C
	_____	___ C		_____	___ C
Date Out	Feb 17	✓ C		Mar 24	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

House BILL NO. 281

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROMOTE THE GENERAL WELFARE IN IMPLEMENTATION OF ARTICLE XII, SECTION 2, OF THE MONTANA CONSTITUTION BY ALLOWING EMPLOYEES OF MUNICIPAL AND COUNTY GOVERNMENTS TO AGREE TO WORK MORE THAN 8 HOURS A DAY AND TO AGREE TO A 14-DAY, 80-HOUR WORK PERIOD AND BY ALLOWING FIRE DEPARTMENT EMPLOYEES TO WORK A MUTUALLY AGREEABLE WORKDAY OR SHIFT AND WORK PERIOD; AMENDING SECTIONS 7-33-4126, 39-3-406, AND 39-4-107, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-33-4126, MCA, is amended to read:

"7-33-4126. Hours of work of members of paid fire departments in cities of first or second class. (1) The city council, city commission, or other governing body in cities of the first or second class shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than 8 hours of each consecutive 24 hours except in the event of a conflagration or other similar emergency when any of such members may be required to serve so long as the necessity therefor exists.

(2) Each member shall be entitled to at least 1 day off duty out of each 8-day period of service without loss of compensation.

(3) This section does not apply to the extent that one or more of its provisions relates to a matter that is the subject of a mutual agreement made under 39-4-107(4)."

Section 2. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose

HB 281

earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the

provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for

profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside

in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight; ~~or~~

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1)~~.~~; or

(n) an employee of a municipal or county government if, prior to the performance of the work, the employer and employee agree to a 14-day, 80-hour work period or, in the case of a fire department employee, to any other mutually agreeable work period, including what is known as the Kelly shift. Employment in excess of 80 hours in a 14-day, 80-hour work period or in excess of an amount of time mutually agreed to when fire department employees agree to any other work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee."

Section 3. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. ~~In cases of emergency when life or property is in imminent danger this~~ This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (2) through (4).

(2) For firefighters in cities of the first and second class, a workweek consists of a maximum of 40 hours during a 5-day week unless a different work period is agreed to under subsection (4).

(3) In counties where regular road and bridge departments are maintained, the county commissioners may,

with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

~~(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.~~

(4) In municipal and county governments, the employer and employee may agree, prior to the performance of the work, to a workday of more than 8 hours and to a 14-day, 80-hour work period or, in the case of fire department employees, to any other mutually agreeable workday or shift and work period, including what is known as the Kelly shift."

-End-

STATUS SHEET

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

___Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Ou
HB 226	Grants authority to the Div. of Workers Comp to employ adequate number of boiler inspectors and to set their duties	1/13	Asay	1/20	AND AS AMENDED DO PASS	1/20
HB 256	Places unemployment insurance penalty and interest collections by the Dept. of Labor in the state general fund	1/17	Wallin	1/25	TABLED	1/25
HB 270	Allows a person who is temporarily totally disabled under Workers' Comp Laws to use wage credits from prior employment	1/18	Driscoll	1/25	DO PASS	1/25
HB 271	Authorizes manufacture of certain signs in institutions; forbids any future collective bargaining contract from restricting such; state government to buy, etc.	1/18	Thoft	1/25	DO NOT PASS	1/31
HB 277	Makes Workers Comp coverage mandatory for independent contractors and providing for an optional exemption from coverage	1/18	Smith	2/1	AND AS AMENDED DO PASS	2/8
HB 281.	Allows employees of municipal and county governments to work more than 8 hours a day and to agree to a 14-day, 80-hour work period and allows fire dept. employees to work an agreeable	1/18	Dozier	1/25	AND AS AMENDED DO PASS	2/17

Form CS-32 workday.
1-81

HOUSE BILL NO. 281

INTRODUCED BY DOZIER

IN THE HOUSE

January 17, 1983	Introduced and referred to Committee on Labor and Employment Relations.
February 18, 1983	Committee recommend bill do pass as amended. Report adopted.
February 19, 1983	Bill printed and placed on members' desks.
February 21, 1983	Second reading, do pass as amended.
February 23, 1983	Correctly engrossed.
	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Labor and Employment Relations.
March 24, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 25, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in. Ayes, 41; Noes, 6.

IN THE HOUSE

March 28, 1983	Returned to House with amendments.
April 1, 1983	Second reading, amendments not concurred in.

April 1, 1983	On motion, Conference Committee requested and appointed.
April 16, 1983	Conference Committee reported.
April 18, 1983	Second reading, report adopted.
	Third reading, report adopted.
April 19, 1983	Conference Committee report adopted by Senate.
April 20, 1983	Sent to enrolling.
	Reported correctly enrolled.

Rep Ellerd asked Mr. Smith if he felt the money should be used for other purposes such as land purchases. Mr. Smith said he didn't believe the fund should be put into another fund and should be used for the payment of benefits. Mr. Smith suggested earmarking this as interest money and using it to pay the interest on the federal loan.

Rep. Hannah said this money has come in under penalty interest and, since it is anticipated that all the money for benefits will be spent by the end of February, shouldn't we be using all the penalty and interest money to pay for benefits. He asked, historically, how much of this money goes for payment of benefits. Mr. Hunter said, with the exception of those few instances, all has gone to pay benefits.

Rep. Harper asked if some of the money could be used to help keep some of the outlying job services open. The reply was that SB 213 will allow the legislature to decide if the job services are going to remain open.

REPRESENTATIVE WALLIN closed. He quoted from a letter from the Legislative Auditor's Office which said these funds can be used to purchase the land in Bozeman. He said we have no handle on this kind of thing. He said we have to decide whether we want the legislature to be responsible to handle the money or if we want a division to handle it.

Rep. Williams asked if the money wasn't authorized by the legislature. Rep. Wallin said it was appropriated in May and the land was bought in March.

Rep. Smith asked of Rep. Wallin if he thought it was right to charge the employer for the unemployment insurance fund and then take a portion and put it into the general fund. Rep. Wallin said we should have control of the expenditures and the money that comes in.

Rep. Wallin said he wished to explain again that the money was spent before the money was appropriated. He said he could document this.

Chairman Williams closed the hearing on HB 256 and opened the hearing on HB 281.

HOUSE BILL 281

REPRESENTATIVE BOB DOZIER, District 61, chief sponsor, said this was an attempt to provide for more flex time for public employees. He said there are some problems with the way it

is drafted so the bill needs some work. He said the subject is well worth the doing - provides for a 14-day, 80 hour pay period. He said, unfortunately, the way it is written every individual can work out different schedules. He said an Attorney General's Opinion says cities with a charter can use these kinds of hours now, but he didn't know if that decision will hold up in court.

MAE ANN ELLINGSON, City of Missoula, spoke in support, and a copy of her testimony is Exhibit 5.

BILL VERWOLF, City of Helena, spoke next in support. A copy of his testimony is Exhibit 6.

CHAD SMITH, Montana Hospital Association, spoke in support. He said he was speaking for three hospitals - three county hospitals. He said there are 70 hospitals in Montana but most are community or privately owned hospitals and not covered by the state law. He said they already under the federal law have an 80-hour provision. He said SB 143 deals with the same subject in the hospital field. He felt this would benefit the hospitals and he asked for the committee's support of the bill and of SB 143 when it appeared.

VERN ERICKSON, Firemen Association, said there is another bill that deals with the same thing for firefighters. He said they feel the fire department shift is a little different and so have designed a bill that is for firemen only.

DICK KANE, Labor Standards Division, spoke as an information person. He said the Supreme Court Decision ruled that the provision is not subject to the provision of the overtime so the language addressing the firefighters was moved to the section addressing the wages. It does not provide for overtime as does the present law. He left a copy of the court case which is Exhibit 7.

CARL THOMPSON, Traffic Technician, City of Missoula, sent a letter supporting the bill and this is Exhibit 8.

Questions were asked by the committee.

Rep. Driscoll asked if any of the flex workers would be interested in voluntary overtime. Ms. Ellingson said no.

Rep. Harper asked of Bill Grove concerning the police force and the shifts. Mr. Grove said they come under the regular employee part. He felt the bill could cover the police.

Rep. Miller asked if Mr. Smith saw any detrimental effects on the switch to four 10-hour days. Mr. Smith said it would depend upon the employee and how much personal energy he had.

Rep. Miller asked if this overtime has been a problem. Mr. Erickson answered that he didn't think it has been. He said they are doing this not because of a problem but because of the Attorney General's Opinion. He said they are just trying to clear that up.

Chairman Williams closed the hearing on HB 281 and opened the hearing on HB 271.

HOUSE BILL 271

REPRESENTATIVE BOB THOFT, District 92, chief sponsor, said overcrowding and idleness were said to be two of the main problems at the prison. He felt it was important to try to develop a good work ethic. He said he had put in quite a lot of time to determine the needs. He said this bill would make 85 jobs for prison inmates. He said he realized the bill would delete some jobs in the Fish, Wildlife and Parks Department but he felt that could be handled by attrition. He said it would take an additional building to house these proposed industries. He said the bill does need some amending, but he said he had talked to the Chairman and he had been asked to go ahead with the bill and then get together and work out the amendments. He said most of his proponents were in Deer Lodge and unable to come testify.

CARROL SOUTH, Department of Institutions, said they support the concept of the bill but it would need amendments to make it work. He said he was totally opposed to the bargaining language and couldn't support it with that in. He felt it should be amended in such a way that it was permissive. He said the Federal Highway Act was amended prior to December, 1982, so no inmate labor can be used on highway projects. He said they must also determine if they can meet the needs of all the named agencies - that they can prepare all signs. He said a diversion clause is also needed - highway earmarked funds and a manufacturing diversion that would need to be addressed. He said there are special requirements for such an industry as this, so a lot of pieces will have to fall in place before we could do it. He said they would use the same building as houses the license shop and the maintenance shop would be relocated. He said they cannot do this without legislative approval, and they would prefer having it permissive rather than mandatory at this time.

EX. 5

Missoula, Montana 59802

THE GARDEN CITY
HUB OF FIVE VALLEYS

January 25, 1983

OFFICE OF CITY ATTORNEY
201 West Spruce Street
Phone 721-4700

83-70

TO: MEL WILLIAMS, CHAIRMAN
MEMBERS OF HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

FROM: MAE NAN ELLINGSON FOR THE CITY OF MISSOULA

RE: HB 281

The City of Missoula supports HB 281 as introduced by Representative Dozier for two reasons: first, it will clarify what the state law is relative to whether public employees and public employers can agree to work hours other than five 8-hour shifts; and secondly, it will specifically address the issue of whether firefighters can bargain for work shifts and schedules other than those statutorily defined.

As to the first point, state law currently provides in Section 39-4-107 that:

(1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, (or) state government....

(2) For firefighters in cities of the first and second class, a work-week consists of a maximum of 40 hours during a 5-day week.

In spite of this language the Attorney General's Office issued an opinion in June of 1980 holding that "local law enforcement agencies may, with the consent of the affected employees, schedule a 40-hour workweek consisting of four consecutive 10-hour days." On the strength of that opinion, even though it applied only to law enforcement, the City has negotiated contracts with its street department workers and police officers for four 10-hour shifts. We would feel on safer ground, however, if we were operating pursuant to state law rather than an Attorney General's Opinion. In that Attorney General's Opinion, 38-83, he noted, "It would be appropriate for the Legislature to amend the strict language of Section 39-4-107, MCA to make it compatible with current employment practices and court interpretations." You might think it appropriate that the judicial branch interpret the law as written until you change it rather than revise the law themselves through interpretation and then suggest you amend the law. I would not disagree with you on that. Nevertheless there does exist a discrepancy between what the statute book says on its face and what the court says the law is, so those of us who have to deal with the statute would appreciate some clarification.

Before I go on to the second reason we support this bill, I should add that the City of Missoula has had great experience with more flexible working arrangements.

AN EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER M/F

As mentioned earlier, our police officers work a 40-hour workweek consisting of four 10-hour shifts. Our officers requested this shift change at the bargaining table because it gave them 3 days off between workweeks. The shift allows the department some flexibility in scheduling and allows the overlapping of shifts during peak incident times. The overlapping also allows us to avoid gaps in patrol which would occur because the ongoing shift must be briefed and the terminating shift must finish paper work.

The four 10-hour day work shift has been used in the City streets, parks and vehicle maintenance departments to take advantage of long daylight hours, cut down on employees travel time to and from the job, reduce down time for breaks, reduce fuel costs and to improve morale.

I want to emphasize that in the City of Missoula that in every case the request to work four 10-hour shifts has originated from the bargaining unit, not the employer. What we are talking about in this legislation is the ability of the employer and employee to agree to a work schedule other than five 8-hour days.

The second thing that this bill would do is change the law relative to work hours of firefighters. As you can see from the provisions of Section 7-33-4126, state law currently says that firefighters shall be divided into platoons of three shifts each working no more than 8 hours in each 24-hour period.

Most cities and firefighters associations have taken or had taken the position that, notwithstanding this section of law, firefighters and their employers could probably bargain for some other shift that was more to their liking for whatever reason and they did so. In October of 1981 the Attorney General issued another opinion, this time holding that a firefighter's work schedule must conform to Section 7-33-4126 and that the firefighters and their employers cannot agree to work a schedule any different than the one statutorily provided.

On the strength of this opinion, the City of Missoula has reverted to the statutorily prescribed 8-hour shifts and it appears that efficiency and certainly morale are suffering.

The bill as proposed then would allow firefighters and their employees to agree to work shifts other than the one statutorily prescribed. The standard five 8-hour shifts, 40 hour workweek for firefighters is the exception rather than the norm. Because of the unique nature of the firefighting service, firefighters nationwide and in the Northwest average greater than 40 hours per week. In most states the hours of work are not stipulated by state law. State and local jurisdictions alike recognize the nature of firefighting which allows for many hours of nonproductive standby. Consequently the practice of requiring a greater than 40-hour workweek is wide spread. The average for 301 municipalities in the 25,000 to 50,000 population range was 52.46 hours per week (1981 Municipal Year Book). An average for cities of comparable size in the Northwest was 50.57 hours per week according to the same source. (1981 Municipal Year Book) the following cities are included:

Bellingham, WA	55	Corvallis, OR	56
Butte, MT	40	Everett, WA	42
Casper, WY	56	Helena, MT	47
Cheyenne, WY	50	Idaho Falls, ID	56
Longview, WA	51	Olympia, WA	56
Medford, OR	56	Pocatello, ID	56
Missoula, MT	40	Renton, WA	47

State law limiting firefighters to a 40-hour workweek imposes a significant cost on Montana municipalities. For example, in Missoula the manpower requirement to operate an average 40-hour shift, compared to a 42-hour shift, is three more full time employees or $60,000 at an average cost of $20,000 per firefighter.

This bill as proposed does not mandate that firefighting personnel work more than 40 hours a week, but rather it allows firefighters and their employees to bargain and ultimately agree to a work schedule of their choosing.

For these reasons, the City of Missoula encourages your support of this bill as submitted.

Respectfully,

Mae Nan Ellingson

Mae Nan Ellingson
Deputy City Attorney
201 West Spruce
Missoula, Montana 59802

MNE:kjr

Ex. 6

WITNESS STATEMENT

Name Bill Verwolf Committee On Labor

Address 1029 3rd Helena Date Jan. 25, 1983

Representing City of Helena Support X

Bill No. HB 281 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This bill provides a method to allow, where the municipal or county government, and the employees, agree, a work week other than the standard 5-day, 8 hours per day schedule.
2. The flexibility allowed by this is to the advantage of the employer and the employee in allowing a nonstandard work schedule where it is advantageous to both parties.
3. This bill does not provide for unilateral decisions by either party.
4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

HB 281
Mr. Lane

No. 12100

IN THE SUPREME COURT OF THE STATE OF MONTANA

1971

THE CITY OF BILLINGS, a municipal Corporation and YELLOWSTONE COUNTY, MONTANA, a body politic,

Plaintiffs,

-vs-

THE HON. SIDNEY T. SMITH, Commissioner of Labor of the State of Montana,

Defendant.

ORIGINAL PROCEEDING:

Counsel of Record:

For Plaintiffs:

Harold F. Hanser, County Attorney, argued, Billings, Montana.
John R. Davidson, City Attorney, argued, Billings, Montana
Donald Ostrem, City Attorney, argued, Great Falls, Montana.
Perry J. Moore, Intervenor, argued, Harlowton, Montana.
J. A. Alexander, City Attorney, Butte, Montana.
C. W. Leaphart, Jr., City Attorney, Helena, Montana.
Ralph T. Randono appeared, Great Falls, Montana.

For Defendant:

Hon. Robert L. Woodahl, Attorney General, Helena, Montana.
Lawrence D. Huss and John P. Connor, Jr., Assistant Attorney Generals, argued, Helena, Montana.
D. Patrick McKittrick, Amicus Curiae, argued, Great Falls, Montana.
John C. Hall, Amicus Curiae, Great Falls, Montana.
John C. Sheehy, Intervenor, argued, Billings, Montana.
William Jensen and Thomas Ashton, III appeared, Helena, Montana.

Submitted: September 30, 1971

Decided: SEP 29 1

Filed:

_____ Clerk

Mr. Justice Wesley Castles delivered the Opinion of the Court.

This is an original proceeding seeking a declaratory judgment that House Bill No. 338, Chapter No. 417, Laws of 1971, called the Minimum Wage Act, is unconstitutional, or that certain persons are excluded from its provisions, or that in any event, certain persons can by contract waive the provisions of the Act. The City of Billings and the County of Yellowstone filed their petition, and this Court accepted original jurisdiction.

As a result of this Court's order accepting jurisdiction, other parties have been permitted to appear designated as amicus curiae or interveners. They include intervener, John H. Bangs; amicus curiae, Montana State Firemen's Association, Montana Legal Services Association, John C. Hall, City of Helena, City of Great Falls; and intervener, John C. Sheehy.

The City of Billings, the County of Yellowstone, the City of Helena, and the City of Great Falls will all be treated as plaintiffs. Sidney T. Smith is Commissioner of Labor of the State of Montana, represented by the Attorney General and will be called defendant. Unless otherwise indicated, the terms plaintiffs and defendant will include positions of interveners and amicus curiae.

Two general issues are presented by the petition seeking a declaratory judgment. One is an attack on constitutionality; the other seeks a determination of the legality of the defendant's decision holding that police officers, firemen and deputy sheriffs are covered by the Act in question.

The Act consists of its title; Section 1, a declaration of policy; Section 2, definitions; Section 3, compensation; Section 4, exclusions; Section 5, regulation making and administrative power

to the Commissioner of Labor; Section 6, enforcement; and Section 7, provisions to be cumulative. No savings clause appears.

The title of the Act is as follows:

> "AN ACT TO ESTABLISH MINIMUM WAGES AND HOURS FOR EMPLOYEES IN THE STATE OF MONTANA; DELEGATING TO THE COMMISSIONER OF LABOR THE DUTY OF ADMINISTERING THE ACT; AND PROVIDING ENFORCEMENT."

In Section 4 are listed exclusions, among which is subdivision (j):

> "Any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner."

Section 5 provides:

> "Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this act. Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner who shall thereupon set such matter for hearing in the county of residence of such protestant within thirty (30) days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify."

Pursuant to Section 5, the Commissioner, defendant here, issued regulations, including a regulation further defining and delimiting the words -- executive, administrative and professional, as used in the exclusion set forth above in subdivision (j) of Section 4.

The plaintiffs here are the City of Billings and the County of Yellowstone. The city has policemen and firemen employed; the county has deputy sheriffs employed. Because of the nature of both law enforcement and fire protection work, and from past custom, practice and agreement, these officers work overtime by assignment

and because of the natural progression of what might be termed investigative or duty requirements. We observe parenthetically that crimes and fires do not keep regular shift hours; budgets and planning are therefore difficult.

Following the issuance of regulations defining the term "individual employed in a bona fide professional capacity", plaintiffs sought and received an interpretation by the Commissioner of Labor. He ruled, in writing, that police officers, firemen, and deputy sheriffs were not excluded under the Act.

The action was brought. Defendant, as well as some of amicus curiae, attack the action by motion to dismiss on procedural grounds (1) that no emergency exists and this Court should not accept original jurisdiction, (2) that administrative remedies have not been exhausted, and (3) that there are fact issues which should be tried in the trial court. The latter two grounds are tied together in that further administrative hearings might be needed to determine whether individual officers have enough training, experience and scientific know-how to qualify for "professional" status and thereby be exempt from provisions of the Act.

In this opinion, we shall neither go into nor determine the facts. We deny the motion to dismiss as to the ground of our acceptance of original jurisdiction. The emergency nature clearly appears sufficient for this court to determine the legality of the Act since its effect is broad upon all the citizens of Montana. See Rule 17, M.R.App.Civ.P.; State ex rel. Schultz-Lindsay v. State Board of Equalization, 145 Mont. 330, 403 P.2d 635.

Plaintiffs' first contention is that the Act is unconstitutional in:

(a) The title is defective in contravention of Article V, Section 23 of the Montana Constitution.

(b) It is an invalid delegation of legislative power in that it delegates power of definition of terms as well as power to administer and enforce the Act without standards or guidelines.

(c) The Act is so vague, Section 4(j) in particular, that by providing criminal penalties the Constitution is violated.

(d) No savings clause, so if the Act is defective in one part the entire Act fails.

(e) It is also urged that the classifications are arbitrar and result in a lack of uniformity.

Article V, Section 23 of the Montana Constitution provides:

> "No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed." (Emphasis added)

This Court in City of Helena v. Omholt, 155 Mont. 212, 219-221, 468 P.2d 764, discussed the application of Article V, Section 23 to an appropriation bill, H.B. 557, Laws of 1969:

> "The title of the appropriation bill, House Bill No. 557, contains this language:
>
> "'An Act Appropriating Money to the State Auditor From the Police Account of the Earmarked Revenue Fund for the Biennium Ending June 30, 1969, for the Purposes Enumerated in Chapter 261, Laws of 1965; and Providing the Method of Disbursement.'
>
> "This title indicates that the purpose of the appropriation bill is to appropriate money to carry out the purposes enumberated in Chapter 261, Laws of 1965 (codified as sections 11-1834 through 11-1837, R.C.M. 1947). The enumerated purposes of Chapter 261, Laws of 1965, are expressed in its title:

"'An Act to Provide for Annual Payments From the Premium Tax Collected on Motor Vehicle Insurance to Every City or Town Having a Police Department; Providing How Such Payments Shall be Expended by The Cities or Towns.'

"The provision for annual payment to every city or town is mandatory. Section 1 of Chapter 261, Laws of 1965 (codified as section 11-1834), provides in pertinent part:

> "'At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana, having a police department, his warrant in an amount * * * [determined by the formula used for fire departments]'. (Emphasis added; bracketed material paraphrased.)

"This mandatory annual payment of state funds to every city and town having a police department is not effectuated by Section 2 of House Bill No. 557. On the contrary, such purpose is defeated thereby. Section 2 prohibits disbursement of state funds appropriated to make these mandatory annual payments to those cities and towns not meeting certain qualifications and requirements, principally those cities not making a mill levy for payment of reserve police officer's salaries and those cities not withholding 5% of the salaries of its active police officers.

"In addition the title of House Bill No. 557 contains the concluding phrase 'and Providing the Method of Disbursement'. Nowhere in the body of the act is any mention made of any 'Method of Disbursement', unless the prohibitions and restrictions on any disbursements to nonqualifying cities falls within the ambit of that term. We conclude that such interpretation requires an active and fertile imagination, and decline to so construe it.

"For the foregoing reasons, House Bill No. 557 contains a false and deceptive title. Art. V, Sec. 23 of the Montana Constitution is designed to prevent legislators and the people from being misled by false or deceptive titles. This Court succinctly summarized this purpose in Johnson v. Meagher County, 116 Mont. 565, 570, 155 P.2d 750:

> "'What were the purposes of section 23 of Article V of the Constitution? "Stated briefly, these purposes are to restrict the Legislature to the enactment of laws the subjects of which are made known to the lawmakers and to the public, to the end that any one interested may follow intelligently the course of pending bills to prevent the legislators and the people generally being misled by false or deceptive titles, and to guard against the fraud which might

> results from incorporating in the body of a bill provisions foreign to its general purpose and concerning which no information is given by the title." (Citing cases.)(State ex rel. Foot v. Burr, 73 Mont. 586, 238 P. 585.)'
>
> "To like effect see Male v. Belgrade Co., Ltd., 74 Mont. 308, 240 P. 371; State ex rel. Holliday v. O'Leary, 43 Mont. 157, 115 P. 204; Russell v. Chicago, B. & Q. Ry. Co., 37 Mont. 1, 94 P. 488, 501; Yegen v. Board of County Commissioners, 34 Mont. 79, 85 P. 740; State v. Brown, 29 Mont. 179, 74 P. 366. The test under this provision of the Montana Constitution is simply this --- Is the title of legislation in question of such character as to mislead the public or members of the legislature as to the subjects embraced? State v. Driscoll, 101 Mont. 348, 54 P.2d 571; Arps v. State Highway Commission, 90 Mont. 152, 300 P.549."

Here, we have a simple, brief title which grants the Commissioner of Labor the authority and duty to administer the Act. Section 2 of the Act defines seven words or terms--- commissioner, wage, employ, employee, occupation, farm worker, and, farm or ranch. Then, in Section 5 the commissioner is granted power to carry out the purpose of the Act. He can, and did, define the terms in the exclusion section, Section 4(j), and further, determined and delimited the terms within standards marked out by the fair and natural meaning of the terms used.

In Bacus v. Lake County, 138 Mont. 69, 81, 354 P.2d 1056, this Court said:

> "'Delegation of power to determine who are within the operation of the law is not a delegation of legislative power. * * * But it is essential that the Legislature shall fix some standard by which the officer or board to whom the power is delegated may be governed, and not left to be controlled by caprice.'
>
> "We agree with this statement of the law and go further by saying that the standard must not be so broad that the officer or board will have unascertainable limits within which to act."

In Sigety v. State Board of Health, ____Mont.____, 482 P.2d 574, 28 St.Rep. 268, this Court again discussed Article V, Section 23 of the Montana Constitution as it affected the validity of the Dredge Mining Regulation and Land Preservation Act, holding that the body of that act, in effect, added to the title other forms of mining than simple dredge mining and was thus invalid. Sigety is distinguishable because here the title puts anyone on notice that the Act seeks to regulate wages and hours and delegates the duty of administering the Act to the commissioner.

Plaintiffs, however, insist that nowhere can we find the standards and guidelines, and contend that the policy of the Act is not sufficiently set forth.

Plaintiffs rely on Bacus. The Act in question here, when read as a whole, spells out the purpose and the procedures to be used to implement the Act. It sets forth the duties of the commissioner, wages that must be paid, and persons excluded. By contrast, in Bacus section 69-801, R.C.M. 1947, purported to give Boards of Health unrestricted, even omnipotent, authority to enact rules and regulations pertaining to "prevention of disease and the promotion of public health". We found this to be without sufficient standards and to give unascertainable limits. Conceivably, under "promotion of public health" the boards might even have regulated hours of work! We held that unconstitutional.

In Milk Control Board v. Rehberg, 141 Mont. 149, 161, 376 P.2d 508, it was contended that an invalid delegation of legislative power was granted to the milk control board. The Milk Control Act provided the board should act to provide producers and distributors of milk with a reasonable profit. It did not say the board had the power to set a minimum price, but this Court upheld the act,

stating "* * * reasonable profit contemplates a minimum pri at which milk can be sold in view of surrounding circumstan The power to set a minimum price was held to bear a real an substantial relationship to the object to be attained.

The Act here, the Minimum Wage Act, actually gives specific guidelines than did the Milk Control Act.

For further discussion of the Bacus rule, see City Missoula v. Missoula County, 139 Mont. 256, 362 P.2d 539 and Plath v. Hi-Ball Contractors, Inc., 139 Mont. 263, 362 P.2d

So far, we have discussed the title of the Act and delegation of legislative power as one issue. Here, we think this proper because if the subject of the legislation is sufficiently set forth in the title, and the body of the Act does by procedural methods deceive or mislead the legislature or p then the title is not defective. There is no secretive or to unrelated legislation within the body of the Act.

To further determine whether sufficient standards or guidelines exist, we shall look to decisions of the federal co which have been ruling on this administrative power delegated the Congress for decades. We look particularly to the field o labor legislation; that is, to wages and hours legislation. T Fair Labor Standards Act is similar to our Minimum Wage Act in enunciating the exemptions from the provisions of the Act.

29 U.S.C.A. § 213 provides:

> "(a) The provisions of sections 206 [minimum wages] . 207 [maximum hours] of this title shall not apply with respect to ---
>
> > "(1) any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary * * *)".

In Fanelli v. United States Gypsum Co., 141 F.2d 216 (2nd Cir. 1944), the court held that the authorization to the administrator to define and to limit by regulations the terms [executive, administrative, or professional] used in the section, did not unconstitutionally delegate power vested in the legislative branch.

In Devoe v. Atlanta Paper Co., 40 F.Supp. 284, 286 (DC Ga. 1941), the court held the delegation of power to the administrator to define "employee employed in a bona fide executive * * * capacity" is constitutional, and such power is constitutionally exercised where the definition formulated by the administrator is within the limits laid down by the Congress which "* * * are marked out by the fair and natural meaning of the words 'bona fide executive * * * capacity.'" (Emphasis added). This indicates that to find the power to have been unconstitutionally exercised, this Court will have to find the definitions of the Commissioner of Labor to be outside the fair and natural meaning of the words. See Walling v. Yeakley, 140 F.2d 830.

Thus, we conclude the Act does not violate Article V, Section 23 of the Montana Constitution, nor does it constitute an unlawful delegation of either legislative or judicial power. (For judicial or quasi-judicial power, see State ex rel. Lee v. Montana Livestock Sanitary Board, 135 Mont. 202, 339 P.2d 487.)

By what we have said heretofore, we have also disposed of the third contention--that the act is so vague as to be unconstitutional.

This leaves two constitutional issues urged by plaintiffs and intervener Bangs. (1) The lack of a savings clause which only becomes important if we find one part of the act to be unconstitutional. (2) That the classifications are arbitrary and result

in a lack of uniformity, urged by intervener Bangs. In the broad sweep of our assumption of jurisdiction here, intervener Bangs would have us examine fact situations that we are not prepared to examine. Whether or not a reasonable classification is made in the Act, is beyond the scope of our inquiry here. Whether the statute is wholly lacking in rational justification and is thus paten arbitrary in its Section 3 which, briefly, makes a distinction between students employed at amusement and recreational establishments operating on a seasonal basis and those employed on a year-round basis, is not here considered. We do, however, note the general rule that a statute is presumed to be constitutional and will not be held otherwise unless it clearly and palpably violates the law.

In establishing classification, it is to be presumed the legislature had before it the necessary information leading it to make such classification. State v. Loomis, 75 Mont. 88, 242 P. 344; State v. Safeway Stores, Inc., 106 Mont. 182, 76 P.2d 81; Calvert v. City of Great Falls, 154 Mont. 213, 462 P.2d 182.

Having disposed of the constitutional issues, we turn to plaintiffs' second contention. In the petition, or complaint, for declaratory judgment, plaintiffs contend:

> "That such act conflicts with the statutes of the State of Montana and particularly the following:
>
> "1. Chapter 18, Section 11 of the Revised Codes of Montana, 1947, as amended and particularly Section 11-1832 R.C.M., 1947.
>
> "2. Chapter 19, Section 11 of the Revised Codes of Montana, 1947, as amended and particularly Section 11-1932 R.C.M., 1947.
>
> "3. Chapter 6, Section 25 of the Revised Codes of Montana, 1947, as amended and particularly Section 25-604, R.C.M., 1947 and further that the plaintiffs are in doubt as to the intention and provision of

> said act in respect to whether or not deputy sheriffs, police officers and firemen are or may be excluded from the provisions of such act under Section 4(j) as being persons who are employed in a 'professional capacity'."

The responsive pleadings of defendant and intervener Sheehy bring in issue, by way of denial, the effects of the aforementioned code chapters. Additionally, the complaint alleges the defendant Commissioner of Labor has erred in his ruling that police officers, firemen, and deputy sheriffs are included within the Act.

By way of motion to dismiss, it is contended that administrative remedies have not been exhausted; that the Act grants a means of review in its Section 5; that fact issues as to the training, education and experience of officers have never been submitted; and, that therefore this Court should not rule. However, our inquiry here will be whether or not the exclusion, Section 4(j) in particular, was intended by the legislature to include policemen, firemen and deputy sheriffs. In other words, are policemen, firemen, and deputy sheriffs included in the terms "bona fide executive, administrative, or professional capacity"?

Admittedly, they are not labeled as such. However, we find an examination of Chapter 18 and Chapter 19 of Title 11 and Chapter 6 of Title 25 and the history of these chapters reveals that policemen and firemen are created by the legislature as a professional and distinct class of employees. As to deputy sheriffs, an examination reveals particularized and special treatment by the legislature sufficient to remove them from the Minimum Wage Act.

Chapter 18 of Title 11 was first enacted to cover police officers in 1907. It has been continued with amendments to date. Briefly, Chapter 18 provides for: police departments; their management; permanent appointment after examination; probationary appoint-

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[illegible] confirm rules; removal or suspension may be provided [illegible]; exemption from military duty [illegible] duty while on duty; [illegible] while on duty; bonds; [illegible] holding other offic[illegible] from political activity; and, [illegible] specific qualifications [illegible] stated. [illegible] In first [illegible] second class cities, a five day work week is established and [illegible] minimum wage for a daily service of eight consecutive hours work [illegible] established. All of these provisions, [illegible] more, show a legislative history of completely [illegible] treatment of policemen as a [illegible]. We find this legislative treatment leaves clearly the legislative intent to treat policemen as professional employees [illegible] the rule which [illegible] "bona fide * * * professional" [illegible] and the exclusion under Section 4(j) [illegible].

In Chapter 10 of Title 15, Minnesota [illegible] likewise separately [illegible], dating back to the year 1885. The statutes are different [illegible] legislative treatment of policemen, but the overall legislative intent is the [illegible]. Again we find the legislative treatment and history reveals the intent to treat firemen as professional employees in the same manner as "bona fide * * * professional" individuals are treated in the exclusion under Section 4(j).

We are aware an argument can be made that had the legislature so intended, it would have said so. However, by our treatment and analysis of the Minimum Wage Act, we have shown that the legislature only established policy and basic guidelines. It did not draft it; neither did it purport to amend, but only to make the Minimum Wage Act comprehensive, as will be more fully developed.

Section 25-604, R.C.M. 1947, relating to deputy sheriffs, [illegible] amended in 1971 by the same legislature that enacted the Minimum

Wage Act here considered. In that act it is provided deputy sheriffs shall not be paid a salary of more than 90% of the sheriff's salary; undersheriffs not more than 95% of the sheriff's salary. In first, second and third class counties, deputy sheriffs are to receive not less than 75% nor more than 90% of the salary of the sheriff. These are specific provisions relating to specific offices.

In the construction of a statute the office of the court is to ascertain and declare what is in terms or in substance contained in the statute, and where there are several provisions or particulars such a construction is, if possible, to be adopted as will give effect to all (section 93-401-15, R.C.M. 1947). In the construction of a statute the intention of the legislature is to be pursued if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it (section 93-401-16, R.C.M. 1947).

Where one statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject in a more minute and definite way, the latter will prevail over the former to the extent of any necessary repugnancy between them. Barth v. Ely, 85 Mont. 310, 278 P. 1002; In re Stevenson's Estate, 87 Mont. 486, 289 P. 566.

In State Aeronautics Comm. v. Board of Examiners, 121 Mont. 402, 417, 194 P.2d 633, this Court said:

> "' * * * It is a canon of statutory construction that a later statute general in its terms and not expressly repealing a prior special or specific statute, will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both, or unless there is something

in the general law or in the course of legislation upon its subject matter that makes it manifest that the legislature contemplated and intended a repeal.'"

The specific intention of the legislature indicates, from the very provisions of the Act, in Section 7, that the legislature intended all of the provisions of law relating to minimum wages and hours to be cumulative. The Minimum Wage Act of 1971 did not repeal any prior acts. This is reinforced by the fact that in 1971, at the same time and in the same session as the passage of the Minimum Wage Act, the legislature also amended section 25-604, R.C.M. 1947, thereby at the same time placing its stamp of approval upon the provisions of that statute.

Where statutes relate to the same general subject they should be so construed together, where there is no inconsistency between them, so as to give effect to both where possible. State ex rel. Ronish v. School District No. 1 of Fergus County, 136 Mont. 453, 348 P.2d 797. All acts relating to the same subject, or having the same general purpose as the statute being construed, should be read in connection with such statute. State ex rel. McHale v. Ayers, 111 Mont. 1, 105 P.2d 686. Statutes passed at the same time, and relating to the same general subject are to be construed together and both given effect if possible. Belote v. Bakken, 139 Mont. 43, 359 P.2d 372.

The provisions of section 25-604, R.C.M. 1947, and the provisions of the Minimum Wage Act of 1971 are in conflict. In such case the special act will prevail over the general provisions of the Minimum Wage Act. Moreover, the salaries granted to county officers are based upon an annual wage rather than a monthly wage. The maximum salary of 95% or 90%, as the case may be, for undersheriffs and deputies is also the minimum fixed by that statute.

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE MINUTES
February 17, 1983

The House Labor and Employment Relations Committee convened at 12 p.m. on February 17, 1983, in Room 224K of the State Capitol with Chairman Williams presiding and all members present except Rep. Seifert, who was excused. Chairman Williams opened the meeting to an executive session on the following bills:

EXECUTIVE SESSION

HOUSE BILLS 281 and 603 Rep. Dozier, chairman of the subcommittee that worked on these bills, said their original intent was to put one bill into the other and eliminate one. But, he said, the firefighters bill, 603, is a much cleaner bill and they felt it should stand on its own. He said the local government wanted its own bill and with the amendments to be suggested it would also be cleaned up and ready to go. He said HB 281 will allow public employers to negotiate with their employees to work something other than five 8-hour shifts. He said if they belong to a collective bargaining unit they will deal with it through that.

Rep. Dozier went through the bill showing what needed to be amended to remove firefighters from the bill. Rep. Harper moved to strike all references to firefighters from HB 281. This motion carried unanimously with those present, absent was Rep. Seifert.

Rep. Dozier passed copies of two sets of amendments to the members, Exhibit 1 and Exhibit 2 of the minutes.

Chairman Williams left to attend a Senate hearing and Vice-Chairman Dozier assumed the chair.

Rep. Miller moved the two sets of amendments with the researcher, Woody Wright, instructed to clean them up. This motion carried unanimously with those present.

Rep. Harper moved AND AS AMENDED DO PASS. This motion carried with Rep. Driscoll voting no and absent is Rep. Seifert. A yes vote was left by Chairman Williams.

Copies of the amendments for HB 603 were passed to the members, Exhibit 3. Rep. Miller moved the amendments be adopted and this motion carried unanimously with those present (Rep. Seifert, absent). Chairman Williams had left a yes vote.

Rep. Smith moved HB 603 AS AMENDED DO PASS. This motion carried unanimously with all present (same absent). Chairman Williams had left a yes vote.

Exhibit 1

Second Set of Amendments to House Bill No. 281

(1) p. 6, line 16
following "(n)"
strike: "if, prior to the performance of the work, the employer and employee agree to a 14-day, 80 hour work period"
insert: "who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement, if a collective bargaining unit represents the employee or by the mutual agreement of the employer and employee where no bargaining unit is recognized,"

(2) p. 8, line 14
following "may agree"
strike: " , prior to the performance of the work, to a workday of more than 8 hours and to a 14-day, 80 hour work period"
insert: "through a collective bargaining agreement if a collective bargaining unit represents the employee or by the mutual agreement of the employer and employee where no bargaining unit is recognized, to a workday of more than 8 hours and to a 7-day, 40 hour work period"

Exhibit 2

1st Amd

Suggested Amendments to House Bill 281

(1) p. 6, line 18
following "to a"
strike: "14-day, 80"
insert: "7-day, 40"

(2) p. 6, line 21
following: "in excess of"
strike: "30 hours in a 14 day, 80-hour"
insert: "40 hours in a 7 day, 40-hour"

(3) p. 8, line 15
following: "and to a"
strike: "14-day, 80 hour"
insert: "7-day, 40 hour"

HB 281 Exh 8

Mr. Carl Thompson
3221 Helena Drive
Missoula, Montana 59803

February 18, 1983

House of Representatives
Labor and Employment Relations Committee
State Capitol
Helena, Montana 59620

Attention: Representative Mel Williams, Chairman
and
Members House Labor & Employment Relations Committee

Dear Sirs:

I am the Traffic Technician for the City of Missoula. My shop is responsible for the installation and maintenance of traffic control devices, centerline painting, lane line painting, and curb painting within the Missoula city limits.

Due to manpower cutbacks and workload increases, we tried a 4-day, 10-hour shift schedule from May to October. We have maintained this schedule for three "painting seasons". Since we adopted this schedule we have been able to stay abreast of the work load, even with manpower shortages. As a supervisor, I find the production end of my responsibilities are greatly enhanced by utilizing the 4-day, 10-hour work week.

As an employee, I do not find the extra two hours of work to be overly tiring. The additional day off each week, particularly, in the summer, is a very welcome bonus. The only complaint I have concerning the 4-10 hour shifts is the requirement to use two hours of vacation each holiday.

I feel management and their employees should have the option to choose a 4-day, 10-hour work week. It is, however, very important to retain the 40 hour basic work week in the law.

Sincerely,

Carl Thompson

Carl Thompson

CT:vm

STANDING COMMITTEE REPORT

February 17, 19 83

MR. SPEAKER:

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 281

First reading copy (white)

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROMOTE THE GENERAL WELFARE IN IMPLEMENTATION OF ARTICLE XII, SECTION 2, OF THE MONTANA CONSTITUTION BY ALLOWING EMPLOYEES OF MUNICIPAL AND COUNTY GOVERNMENTS TO AGREE TO WORK MORE THAN 8 HOURS A DAY AND TO AGREE TO A 14-DAY, 80-HOUR WORK PERIOD AND BY ALLOWING FIRE DEPARTMENT EMPLOYEES TO WORK A MUTUALLY AGREEABLE WORKDAY OR SHIFT AND WORK PERIOD; AMENDING SECTIONS 7-33-4126, 39-3-406, AND 39-4-107, MCA."

Respectfully report as follows: That HOUSE Bill No. 281 be amended as follows:

1. Title, lines 8, 9, and 10.
Strike: "AND BY ALLOWING FIRE DEPARTMENT EMPLOYEES TO WORK A MUTUALLY AGREEABLE WORKDAY OR SHIFT AND WORK PERIOD"

2. Title, line 11.
Strike: "7-33-4126,"
Following: "39-3-406"
Strike: ","

3. Page 1, line 14 through line 5 on page 2.
Strike: section 1 in its entirety
Renumber: following sections

XXXXXX
DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

February 17, 19 83

4. Page 6, line 16 through line 25.
Strike: subsection (n) in its entirety
Insert: "(n) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through
(i) a collective bargaining agreement when a collective bargaining unit represents the employee; or
(ii) by mutual agreement of the employer and employee where no bargaining unit is recognized.
Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee."

5. Page 7, line 19.
Strike: "(2) through"
Insert: "(3) and"

6. Page 7, lines 22 and 23.
Strike: "unless a different work period is agreed to under subsection (4)"

7. Page 8, lines 14 through 19.
Following: "agree"
Strike: the remainder of line 14 through "shift" on line 19
Insert: "to a workday of more than 8 hours and to a 7-day, 40-hour work period: (i) through a collective bargaining agreement when a collective bargaining unit represents the employees; or (ii) by the mutual agreement of the employer and employee where no bargaining unit is recognized"

AND AS AMENDED
DO PASS

J. HELVIN WILLIAMS
Chairman.

STATE PUB. CO.
Helena, Mont.

48th LEGISLATIVE SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB #14	1/10/83	3/1/83	3/3/83				3/3/83		
HB #142	1/24/83	3/1/83	3/3/83				3/3/83		
HB #157	1/24/83	3/3/83	3/8/83				3/8/83		
HB #174	3/1/83	3/22/83	3/24/83						3/24/83
HB #201	1/28/83	3/3/83	3/8/83				3/8/83		
HB #225	1/28/83	2/15/83	3/3/83					3/3/83	
HB #226	1/28/83	2/15/83	3/3/83						3/3/83
HB #270	1/31/83	3/8/83	3/12/83				3/12/83		
HB #277	2/16/83	3/3/83	3/8/83					3/8/83	
HB #281	3/1/83	3/17/83	3/24/83					3/24/83	
HB #300	2/10/83	3/12/83	3/19/83						3/19/83
HB #301	1/31/83	3/12/83	3/15/83				3/15/83		
HB #302	1/31/83	3/10/83	3/15/83				3/15/83		
HB #309	3/1/83	3/17/83	3/24/83					3/24/83	
HB #384	2/7/83	3/15/83	3/19/83				3/19/83		
HB #390	2/4/83	3/15/83	3/19/83					3/19/83	

Use a separate sheet for Senate, House Bills, and Resolutions.

CONSIDERATION OF HOUSE BILL NO. 281:

Chairman Aklestad introduced Representative Bob Dozier, sponsor of House Bill No. 281, to the Committee, and Representative Dozier presented the bill to the Committee.

House Bill No. 281 is an act to promote the general welfare in implementation of Article XII, Section 2, of the Montana Constitution by allowing employees of municipal and county governments to agree to work more than 8 hours a day and to agree to a 14-day, 80-hour work period and by allowing fire department employees to work a mutually agreeable workday or shift and work period.

Representative Dozier stated that House Bill No. 281 is basically a flex-time bill for public employees. The bill addresses the fact that they must have an agreement to do this.

PROPONENTS OF HOUSE BILL NO. 281:

Mae Nan Ellingson, representing the city of Missoula and the city of Helena, stated that they are in support of House Bill No. 281. Her printed testimony is attached.
(Exhibit No. 6)

M. Ellingson stated that she has had excellent experience with the 80-hour, 14-day shifts in Missoula.

R. Nadiean Jensen, representing AFSCME, stated that they support House Bill 281. R. Jensen pointed out a possible proofreading error in the bill--page 9, line 8, the fourth word should read, "represents".

Rose Skoog, representing the Montana Health Care Association, stated that they support House Bill No. 281. They would like county-run nursing home facilities to be able to utilize a more flexible time schedule. They are trying to correct a problem they have with scheduling. R. Skoog presented some proposed amendments to House Bill 281. These proposed amendments are attached.
(Exhibit No. 7)

Chad Smith, representing the Montana Hospital Association, stated that they support House Bill 281 as amended. Mr. Smith presented an amendment to House Bill 281. This amendment is attached.
(Exhibit No. 8)

Mr. Smith stated that they would also support the nursing home amendments submitted by Rose Skoog.

Mr. Smith stated that only 20 hospitals are affected by this bill--only county hospitals and district hospitals.

Eileen Robbins, representing the Montana Nurses' Association, stated that they support House Bill 281, and they would support Rose Skoog's amendments, but not Mr. Smith's amendment.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 281:

Senator Goodover asked Mr. Smith about the wording found on page 7, lines 6 and 7.

Mr. Smith stated that they would offer that as part of the proposed amendment.

Senator Lynch asked Representative Dozier what his feelings were toward Mr. Smith's suggested amendment.

Representative Dozier stated that they would have a problem with the amendment. They see no need for the change and feel it would create more problems.

Mae Nan Ellingson stated that she thinks the bill is preferable the way it was.

Representative Dozier made closing remarks in support of House Bill 281. He feels the bill is in good shape except for some language clarification on page 7. They have no problem with R. Skoog's amendments.

Chairman Aklestad called the hearing closed on House Bill No. 281.

CONSIDERATION OF HOUSE BILL NO. 406:

Chairman Aklestad asked Representative Clyde Smith, sponsor of House Bill No. 406, to present the bill to the Committee.

Representative Smith presented some amendments to House Bill 406. These amendments are attached.
(Exhibit No. 9)

House Bill 406 is an act authorizing the Workers' Compensation Division to collect a premium from insured employers to provide additional funding sources for the Uninsured Employers' Fund.

PROPONENTS OF HOUSE BILL NO. 406:

Gary Blewett, Administrator of the Division of Workers' Compensation, stated that they support House Bill 406. Mr. Blewett's printed testimony is attached.
(Exhibit No. 10)

Mr. Blewett also submitted a table on Uninsured Employers Funding and a pie chart showing the Distribution of Uninsured Employer Cases. The table and chart are attached.
(Exhibit Nos. 11 and 12)

Missoula, Montana 59802

THE GARDEN CITY
HUB OF FIVE VALLEYS

EXHIBIT 6
Submitted by
Mae Nan Ellings
3/17/83

March 17, 1983

OFFICE OF CITY ATTORNEY
201 West Spruce Street
Phone 721-4700

83-189

To: Gary C. Aklestad, Chairman
Members of Senate Labor and Employment Relations

From: Mae Nan Ellingson for the City of Missoula

Re: House Bill 281

House Bill 281 and House Bill 603, which you will be hearing on Saturday, are Bills that seek to allow public employees and their employers to agree on work schedules other than 5 - 8 hour days. Both Bills are desirable. HB 281 is particularly desirable in that the law is not at all clear as to whether city police officers, street department personnel, or any other city personnel can work 4 - 10 hour days, even though many of them are currently doing so.

State law currently provides in Section 39-4-107 that:

> "(1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, (or) state government. . . ."

Even though that language seems fairly clear, the Attorney General issued an Opinion in June of 1980 that "state agencies and local governments may permit their workers to work four ten-hour days per week." That Opinion, Number 38-83, further concludes that "It would be appropriate for the Legislature to amend the strict language of Section 39-4-107 to make it compatible with current employment practices and court interpretation."

On the strength of that Opinion, the City has negotiated contracts with its Street Department employees and police officers for 4 - 10 hour days; and during the summer, we allow our Park and Recreation Department employees to work 4 - 10 hour days. We have undertaken these shifts at the request of affected employees, and we would feel safer in doing so if the statute were changed to reflect what the Attorney General says the law is.

The City of Missoula's experience with more flexible work schedules has been a boon to the City and it employees. In the Street Department it has been used to take advantage of longer daylight hours in the summer, cut down employees travel time to and from the job, reduce down time for breaks, reduce fuel

costs and improve morale by giving employees an additional day off. The City Library which serves the public for periods longer than eight hours a day is another office in which this type of shift schedule could be used. We recognize that not every public office is amenable to 4 - 10 hour days or some other flexible work arrangement. This Bill gives the entity responsible for providing the service the ability to determine how to provide that service.

In the past, the Legislature has adopted a piecemeal approach to this issue. In 1979, the Legislature authorized county road and bridge crews to work 4 - 10 hour shifts. In 1981, the Legislature amended the law to allow sheriff's department employees to work other than 5 - 8 hour shifts. In addition to this Bill this session, you will be considering separate bills for firefighters' and police officers' hours of work. Unless you enact HB 281, I believe that over the years you will see different groups of employees coming in with their own specific bills to allow them to work different hours. This Bill should preclude the need for that type of legislation for most public employees.

In essence we are asking the Legislature to legalize what our City and several other cities and counties are doing.

Very truly yours,

Mae Nan Ellingson

Mae Nan Ellingson
Deputy City Attorney
Missoula, Montana

MNE/jd

PROPOSED AMENDMENTS TO SB 143:

3/17/83

EXHIBIT 7
Submitted by
Rose Skoog
3/17/83

1. Page 5, line 24 through line 6 on page 6

Substitute the language in subsection (n) with the following:

"(n) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through:

(i) a collective bargaining agreement when a collective bargaining unit represents the employee; or

(ii) by mutual agreement of the employer and employee where no bargaining unit is recognized.

Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1-1/2 times the hourly wage rate for the employee."

2. Reinsert current language in Section 2 and remove any new language, leaving Section 2 as it is in the current law.

The above amendments would make state law consistent with federal law. It would give the employer the flexibility to schedule for a 14-day, 80-hour period while still ensuring overtime after 8 hours for the employee.

ACTION ON HOUSE BILL NO. 390:

Senator Keating offered the following amendment to House Bill No. 390.

1. Page 6, line 16.
Following: "parties"
Strike: "at state or local levels"

On a voice vote, the Committee voted unanimously to adopt Senator Keating's proposed amendment to House Bill No. 390.

Senator Keating moved that House Bill No. 390 Be Concurred In as Amended. On a voice vote, the Committee voted unanimously that HOUSE BILL NO. 390 BE CONCURRED IN AS AMENDED.

Senator Manning will carry House Bill No. 390 on the floor.

ACTION ON HOUSE BILL NO. 455:

Senator Lynch moved that House Bill No. 455 Be Concurred In. On a voice vote, the Committee voted unanimously that HOUSE BILL NO. 455 BE CONCURRED IN.

Senator Lynch will carry House Bill No. 455 on the floor.

ACTION ON HOUSE BILL NO. 281:

Senator Manning moved that House Bill No. 281 Be Concurred In.

Senator Goodover submitted the following amendment:

Page 9, line 10.
Following: "no"
Strike: "bargaining unit is recognized"
Insert: "collective bargaining agreement exists or is in the process of being negotiated"

Also, on page 7, the same amendment as above should be inserted.

Senator Goodover moved the above amendments Do Pass. The Committee voted unanimously to adopt the above amendments. Senator Manning proposed the amendment offered by Rose Skoog.

Senator Goodover stated that the Committee should run the amendments by Mae Nan Ellingson and Chad Smith so they would know what was being amended in the bill.

Senator Goodover moved that the Committee pass consideration on House Bill 281 for today. The Committee agreed so no action was taken on House Bill 281 today.

Senator Goodover moved that House Bill No. 826 Be Concurred In as Amended. On a Roll Call Vote, the Committee voted 5-3, that HOUSE BILL NO. 826 BE CONCURRED IN AS AMENDED. The Roll Call Vote is attached.

Senator Keating will carry House Bill No. 826 on the floor.

ACTION ON HOUSE BILL NO. 850:

Senator Keating moved that House Bill No. 850 Be Not Concurred In. On a Roll Call Vote, the Committee voted 5-3 that HOUSE BILL NO. 850 BE NOT CONCURRED IN. The Roll Call Vote is attached.

Senator Lynch requested that a Minority Report be submitted as well. This report is attached.

ACTION ON HOUSE BILL NO. 281:

Senator Manning offered some amendments to House Bill 281. On a voice vote, the Committee voted unanimously to adopt Senator Manning's amendments. These amendments are attached. (Exhibit No. 2)

Senator Goodover stated that the Committee had already adopted amendments to House Bill 281 offered by Mae Nan Ellingson. The amendments by Mae Nan Ellingson are attached. (Exhibit No. 3)

Senator Goodover moved that House Bill 281 Be Concurred In as Amended. On a Roll Call Vote, the Committee voted unanimously that HOUSE BILL NO. 281 BE CONCURRED IN AS AMENDED. The Roll Call Vote is attached.

Senator Manning will carry House Bill No. 281 on the floor.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 2:00 p.m.

Gary C. Aklestad

Senator Gary C. Aklestad, Chairman

mln

STANDING COMMITTEE REPORT

March 24, 19 83

MR. PRESIDENT:

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 281

Dozier (Manning)

Respectfully report as follows: That HOUSE Bill No. 281

third reading, be amended as follows:

1. Title, line 9.
Following: line 8
Insert: "AND BY ALLOWING EMPLOYEES OF HOSPITALS AND SIMILAR ESTABLISHMENTS TO AGREE TO A 14-DAY, 80-HOUR WORK PERIOD"

2. Page 6, line 15.
Following: ";"
Strike: "or"

3. Page 7, line 3.
Following: "THROUGH"
Strike: ":"

4. Page 7, line 4.
Following: line 3
Strike: "(I)" at the beginning of line 4

~~DO PASS~~

(Continued)

Chairman

STATE PUB. CO.
Helena, Mont.

Labor & Employment Relations

HOUSE BILL NO. 281

March 24, 19 83

5. Page 7, line 5.
Following: "EMPLOYEE"
Strike: ";"

6. Page 7, line 6.
Following: line 5
Strike: "IF" at the beginning of line 6

7. Page 7, line 7.
Following: "NO"
Strike: "BARGAINING UNIT IS RECOGNIZED"
Insert: "COLLECTIVE BARGAINING AGREEMENT EXISTS OR IS IN THE PROCESS OF BEING NEGOTIATED"

8. Page 7, line 10.
Following: "EMPLOYEE"
Strike: "."
Insert: "; or"

9. Page 7.
Following: line 10
Insert: "(O) AN EMPLOYEE OF A HOSPITAL OR OTHER ESTABLISHMENT PRIMARILY ENGAGED IN THE CARE OF THE SICK, DISABLED, AGED, OR MENTALLY ILL OR DEFECTIVE WHO IS WORKING UNDER A WORK PERIOD NOT EXCEEDING 80 HOURS IN A 14-DAY PERIOD ESTABLISHED THROUGH EITHER A COLLECTIVE BARGAINING AGREEMENT WHEN A COLLECTIVE BARGAINING UNIT REPRESENTS THE EMPLOYEE OR BY MUTUAL AGREEMENT OF THE EMPLOYER AND EMPLOYEE WHERE NO BARGAINING UNIT IS RECOGNIZED. EMPLOYMENT IN EXCESS OF 8 HOURS PER DAY OR 80 HOURS IN A 14-DAY PERIOD MUST BE COMPENSATED FOR AT A RATE OF NOT LESS THAN 1 1/2 TIMES THE HOURLY WAGE RATE FOR THE EMPLOYEE"

10. Page 9, line 8.
Following: "UNIT"
Strike: "PRESENTS"
Insert: "REPRESENTS"

11. Page 9, line 10.
Following: "NO"
Strike: "BARGAINING UNIT IS RECOGNIZED"
Insert: "COLLECTIVE BARGAINING AGREEMENT EXISTS OR IS IN THE PROCESS OF BEING NEGOTIATED"

And, as so amended
BE CONCURRED IN

STATE PUB. CO.

SENATOR GARY C. AKLESTAD, Chairman.

AMENDMENTS TO HB 281 PROPOSED BY SEN. MANNING, THIRD READING COPY

EXHIBIT 2
Submitted by
Senator Manning
3/24/83

1. Title, line 9.
Following: line 8
Insert: "AND BY ALLOWING EMPLOYEES OF HOSPITALS AND SIMILAR ESTABLISHMENTS TO AGREE TO A 14-DAY, 80-HOUR WORK PERIOD"

2. Page 6, line 15.
Following: ";"
Delete: "or"

3. Page 7, line 10.
Following: "EMPLOYEE"
Delete: "."
Insert: ";or"

4. Page 7, following line 10.
Insert: "(o) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when no collective bargaining agreement exists or is in the process of being negotiated."